

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**



**ADVISORY OPINION NO. 199**

This advisory opinion is in response to a request for advice from the Ethics Commission [Commission] concerning whether a Liquor Commissioner [Mr. C] has violated Sections 11-102(1) and (3) of the Revised Charter of the City & County of Honolulu 1973 (1984 Edition) [RCH].

In general, the Commission believes that Mr. C has not violated Sections 11-102(1) and (3), RCH.

The Commission understands the facts relative to the complaint to be as follows:

Mr. C is employed by and is an officer of ABC Construction, Inc., a general contracting firm. In the course of his employment, Mr. C occasionally works on jobs for businesses which have liquor licenses.

In 19\_\_, Mr. E, then an officer of the City, submitted a confidential report to the Mayor on his investigation of the Liquor Commission. In that document, a reference is made to "Liquor Commissioner \*\*\*\*\*" in a context which indicates "a strong impression of impropriety" in regard to Club Zee. This is the only place in the report where a Liquor Commissioner is referred to without a name being supplied. Mr. E told the Ethics Commission that no name is indicated because he has "much more than a reasonable doubt" that person was Mr. C.

Mr. C told the Ethics Commission that he does not even know where Club Zee is and that he has never been there. He further indicated that he does not patronize such establishments.

The ethical questions presented are: 1) whether Mr. C has accepted free food and drink from Club Zee, and 2) whether his business activities are incompatible with the proper discharge of his official duties as a Liquor Commissioner.

The general rule in regard to the first question appears in Section 11-102.1, RCH, which states in pertinent part:

No elected or appointed officer or employee shall ... [s]olicit or accept any gift, directly or indirectly, whether in the form of money, loan, gratuity, favor, service, thing or promise, or in any other form, under circumstances in which it can

reasonably be inferred that the gift is intended to influence the officer or employee in the performance of such person's official duties.

No evidence was presented to the Commission to indicate that Mr. C has accepted any gift under circumstances in which it can reasonably be inferred that the gift was intended to influence him in the performance of his official duties. Mr. C denied ever having been to Club Zee. Therefore, there is no reason to believe that he has violated Section 11-102.1, RCH.

The general rule in regard to the second question appears in Section 11-102.3, RCH, which states as follows:

No elected or appointed officer or employee shall ... [e]ngage in any business transaction or activity or have a financial interest, direct or indirect, which is incompatible with the proper discharge of such person's official duties or which may tend to impair the independence of judgment in the performance of such person's official duties.

Further, the Charter anticipates Mr. C's situation, for it also provides a procedure for the disclosure of occasional conflicts of interest. Section 11-103, RCH, states in pertinent part:

Any elected or appointed officer or employee who possesses or who acquires such interests as might reasonably tend to create a conflict with the public interest shall make full disclosure to such person's appointing authority ... and to the ethics commission, at any time such conflict becomes apparent. Such disclosure statements shall be made a matter of public record and be filed with the city clerk.

The disclosure statements on file with the Ethics Commission indicate that Mr. C complied with Section 11-103, RCH, when it was applicable. Our records indicate that Mr. C refrained from voting on matters involving those applicants for whom he had filed disclosure statements. Therefore, he has not violated Section 11-102.3, RCH, because he discharged no official duties relative to any of those applicants.

In conclusion, based on the evidence before the Ethics Commission, Mr. C has not violated Section 11-102(1) or (3), RCH.

Dated: October 30, 1990

JANE B. FELLMETH  
Chair, Ethics Commission